



OFFICE OF  
**THE ATTORNEY GENERAL**  
AUSTIN, TEXAS

**Gerald S. Mann**  
ATTORNEY GENERAL

Honorable L. A. Woods  
State Superintendent of Public Instruction  
Austin, Texas

Dear Mr. Woods:

Opinion No. 0-4950  
Re: Construction of penalties  
provision of Article XIV,  
H.B. 284, 47th Legislature.

Your letter asking an opinion concerning the  
above subject matter is as follows:

"I should like to have your opinion on  
Article 14 of House Bill 284, Acts of the  
47th Legislature, which provides that:

"Any district violating any of the  
provisions of this Act shall forfeit  
all rights to such aid and shall be  
disqualified to receive any aid of any  
nature under any Article of this Act for  
the current year."

"If in our auditing and investigation of any  
claim of any district for any type of aid  
provided in the Act we find that there has  
been a violation of any provision of the  
Act, does this Department have the right  
to withhold any and all Equalization aid  
from such district for the current year?"

Article XIV of H.B. 284 in its entirety is as  
follows:

"Any district violating any of the provisions  
of this Act shall forfeit all rights to  
such Aid and shall be disqualified to receive  
any Aid of any nature under any Article of  
this Act for the current year. Should any  
school district which would otherwise be  
eligible to receive Aid fail to use the funds  
for the exact purpose for which they were  
allocated in the approved budget, such  
school district becomes ineligible for  
further Aid until such offense is corrected.  
The amount of money granted for each type  
of Aid except Tuition shall be set up as a  
separate account by the district receiving  
same and

disbursements from said accounts shall be made only for the specified purpose for which such money was granted. It shall be unlawful for any county school superintendent or the superintendent of any common or independent school district, school teacher, county trustee, and/or district trustee, or any other person to use or promise to use, pay or promise to pay, any of the funds herein appropriated for the purpose of paying the salary and/or expense of any person or persons to maintain a lobby for any purpose."

A proper construction of this article in connection with its proper setting in the Act as a whole is, we think, that a school district is ineligible for aid and shall not receive the same when it has violated any provision of the Act in any substantial and material respect. However, we wish to direct your attention to a provision which acts as an exception to the penalty clause and which, theoretically at least, provides a means whereby a violation may be corrected.

Section 2 of Article I prohibits the use of local funds of a district to increase the salaries of teachers above the salary schedule provided for in the Act. Section 2 of Article III prohibits the use of equalization funds to increase the salaries of teachers except as authorized in the Act; it is further provided that the funds provided for in the Act shall be used for the exclusive purpose of extending the length of the school term of the schools situated in the district receiving such aid on the basis of a schedule of teachers' salaries as determined by the State Board of Education for the school year 1938-39. The last sentence of Section 2 of Article III provides as follows:

"Should any school district eligible to receive aid under the provisions of this Act maintain a salary schedule in excess of the salary schedule, as determined by the State Board of Education for the school year 1938-39, the amount of aid received by such school district shall be reduced by the amount of such excess."

Thus, a means, effective or otherwise, is provided whereby the violation of paying increased salaries may be corrected. It can hardly be said that when this means is provided, it was also the intent of the Legislature to invoke the penalty provision of Article IV. To other than this type of violation, it is our opinion that the penalty provision will apply.

The forfeiture here being considered is not in

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the nature of the forfeiture of a vested right in the district in such sense as to require notice and hearing before the declaration or final determination of a forfeiture, but on the contrary, it is in the nature of a want of eligibility for the aid authorized to eligible districts. The Legislature has made certain appropriations to certain school districts, the terms of eligibility of which districts are set out in the act making the appropriations. It is elementary that before moneys can be paid out under an appropriation bill, the terms of the bill must be met. Therefore, if a district is ineligible to receive aid, no moneys can legally be granted to the district under the bill.

The Legislature has placed the responsibility of administering the bill in the State Superintendent and the State Board of Education. Article VI thereof provides in part as follows:

"It shall be the duty of the State Superintendent of Public Instruction, and he is hereby authorized to make such rules and regulations not inconsistent with the terms of this Act, subject to the approval of the Joint Legislative Advisory Committee (Board of Education; Opinion No. 0-4609) created in this Act and for the best interest of the schools for whose benefit the funds are appropriated . . . Appeals from the decisions of the State Superintendent shall be made to the Joint Legislative Advisory Committee (Board of Education; Opinion No. 0-4609) for adjustments and the decisions of said Committee (Board of Education) shall be final."  
(Parenthetical insertions added)

If in investigating and auditing any claim for the current year it is determined that any of the provisions of the Act are being violated in a substantial and material respect, with the exception noted, then the school district guilty of such violation is ineligible to receive aid, and all equalization aid should be withheld from the district for the current year.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY (Signed) George W. Sparks  
Assistant

APPROVED NOV. 18, 1942  
(Signed) Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

GWS:HW:jrb

This opinion considered  
and approved in limited  
conference.